

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

**Larry Fishback, d.b.a. Hidden Valley Mobile
Home Park
Wastewater Facility No. 6-92-00-6-00**

**ADMINISTRATIVE ORDER
NO. 2007-WW- 18**

**TO: Larry Fishback
2071 230th St.
Washington, IA 52353**

I. SUMMARY

This administrative order (Order) requires Larry Fishback, d.b.a. Hidden Valley Mobile Home Park (Mr. Fishback) to do the following: Mr. Fishback shall submit his National Pollution Discharge Elimination System (NPDES) permit application to the Iowa Department of Natural Resources (Department); Mr. Fishback shall submit the \$340.00 fee for operation of a waste water treatment facility (WWTF) to the Department; Mr. Fishback shall timely submit his Monthly Operation Reports (MORs) to the Department; and Mr. Fishback shall pay a penalty of \$2,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Russell Royce, Environmental Specialist
IDNR Field Office #6
1004 W Madison
Washington IA, 52353
Ph: 319/653-2135

Relating to legal requirements:

Carrie Schoenebaum
Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Relating to permit application:

Steve Williams, Environmental Specialist Senior
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8884

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Mr. Fishback owns and operates a WWTF located at Section 11, T 75 N, R 8 W, in Washington County, Iowa. This WWTF is a two-cell controlled discharge lagoon system which treats domestic wastewater from the residents of Hidden Valley Mobile Home Park.

2. Mr. Fishback operates the WWTF pursuant to Iowa NPDES Permit No. 6-92-00-6-00 issued by the Department. This permit expired on June 22, 2006. The cover letter of this permit stated that Mr. Fishback was required to file for renewal of the permit by January 23, 2006.

3. On November 4, 2005, the Department mailed Mr. Fishback an application for renewal of his NPDES permit. This application was partially completed by the Department. Further, Mr. Fishback was informed that the application for renewal was due to the Department by January 22, 2006.

4. On September 7, 2006, Mr. Fishback was sent a letter by the Department which contained another application for renewal of an NPDES permit. This letter informed Mr. Fishback that the application was past due. It also summarized a phone conversation between Tom Atkinson, an Environmental Specialist of the Department, and Mr. Fishback that occurred on July 31, 2006. During that conversation, Mr. Atkinson informed Mr. Fishback that all facilities with an NPDES permit must pay an annual fee by August 30th of each year and that his annual fee is \$340.00. Moreover, Mr. Fishback was informed that the application for renewal and fee must be submitted to the Department by October 15, 2006.

5. On November 17, 2006, the Department sent Mr. Fishback a Notice of Violation (NOV), by certified mail. This NOV was for failure to renew his NPDES permit.

6. On March 3, 2006, Russell Royce an Environmental Specialist of the Department, conducted an inspection of Mr. Fishback's WWTF. On April 28, 2006, a copy of this inspection report was mailed to Mr. Fishback. This report recommended that Mr. Fishback mow the tall grass growing on the berms, remove burrowing animals, pack any burrows with clay and add riprap to discourage burrowing animals.

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7. On February 8, 2007, an inspection was conducted of Mr. Fishback's WWTF and on March 13, 2007, the inspection report was sent to Mr. Fishback. This inspection report informed Mr. Fishback that he will be in violation of Iowa law if his lagoon discharges, unless he obtains an NPDES permit. The inspection report documented that Mr. Fishback's permit required him to submit MORs to the Department within 15 days following the close of the reporting period and that the MORs had not been submitted since December 2005.¹ The inspection report required that Mr. Fishback do the following: submit MORs, maintain the WWTF in good working order, mow the tall grass on the berms, remove burrowing animals and pack the burrows with clay. To date none of these requirements have been completed by Mr. Fishback.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The terms of Mr. Fishback's NPDES permit required submission of MORs to the Department by the fifteenth day following the close of the reporting period. Mr. Fishback's "reporting period is on a monthly basis." The above stated facts show noncompliance with this provision. Moreover, Mr. Fishback's permit required that the permit renewal application be submitted to the Department by January 23, 2006. To date the application has not been submitted.

2. 567 IAC 63.7 requires that "Records of operation shall be submitted to the Department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit." 567 IAC 63.8 requires that records of operation be submitted on monthly intervals. The above stated facts show noncompliance with these provisions.

3. Iowa Code section 455B.183 (1) "c" makes it unlawful to operate a waste disposal system without a permit. Mr. Fishback's NPDES permit expired on June 22, 2006. Therefore, he is operating a waste disposal system without a permit.

V. ORDER

THEREFORE, the Department orders Mr. Fishback to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

¹In the investigation report, Mr. Royce mistakenly documented that the MORs had not been submitted since December 2005, when in fact, MORs have not been submitted since October 2005.

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1. Mr. Fishback shall submit an application for an NPDES permit in accordance with 567 IAC 60.4 within 30 days after the Director signs this Order;
2. Mr. Fishback shall submit the annual \$340.00 fee for operation of a WWTF within 30 days after the Director signs this Order;
3. Mr. Fishback shall timely submit his MORs as required by 567 IAC 63.7; and
4. Mr. Fishback shall pay a penalty in the amount of \$2,000.00 within 30 days after the Director signs this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in Chapter 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with the assessment of penalties.
2. **Economic Benefit:** Mr. Fishback saved money by not allocating time to the submission of MORs or to the completion of his application for renewal of his NPDES permit. In addition, he saved money by not submitting the annual fee required by his NPDES permit. Therefore, \$500.00 is assessed for this factor.
3. **Gravity of the Violation:** Monitoring and reporting are imperative to ensure that WWTFs are properly maintained. Self-monitoring is the backbone of the NPDES program. The nature of these violations weakens the ability of the Department to ensure that Mr. Fishback's WWTF is being properly maintained. Further, the repeat nature of these violations indicates that Mr. Fishback has failed significantly with respect to compliance with his NPDES permit requirements and the requirements of the IAC. In addition Mr. Fishback has failed to renew his NPDES permit; consequently, he is operating a WWTF without a permit. Therefore, \$500.00 is assessed for this factor.
4. **Culpability:** Mr. Fishback has been informed by the Department of the NPDES permit requirement to submit MORs to the Department within fifteen days of the close of the monitoring period. Further, Mr. Fishback has been sent numerous letters by the Department informing him that he must renew his permit. Therefore, \$1,000.00 is assessed for this factor.

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VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director, at the address provided below, within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Carrie Schoenebaum, attorney for the Department, at (515) 281-0824 for more information regarding appeal procedures and resolution of this Order.

VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 19 day of
Oct, 2007.

Field Office 6, Carrie Schoenebaum; Russell Royce, EPA, I.B.2.a.